

REMARKS

Reconsideration and withdrawal of the rejection and the allowance of all claims now pending in the above-identified patent application (*i.e.*, Claims 11-30) are respectfully requested in view of the foregoing amendments and the following remarks.

At the outset, it should be recognized that the present invention provides an apparatus for use in preventing the removal of, or tampering with, a construction fitting that is used for connecting one or more construction elements, *e.g.*, rod or pole-like elements to one another and to other items. Conventionally, such construction fittings, such as those used for a scaffold fitting, are held together using two hinged components with a bolt held in place by one of the two parts, while the other hinged part is retained by a nut. Because such bolt-and-nut retention means are easy to tamper with and thereby loosen, unauthorized removal of the connection between such parts of a construction fitting can represent a significant hazard in the construction industry.

The present invention, as broadly claimed, addresses the need to prevent the removal of, or tampering with, a construction fitting by providing an apparatus that includes a body portion, along with a fastener for connecting two construction element engaging components to one another. The fastener includes a bolt extending between the two construction element engaging components and a nut for tightening on the bolt for rigidly connecting the two construction element engaging components with a gap therebetween. The nut is defined in Applicant's claims as having a first side facing away from the body portion when the fastener is fitted for connecting the two construction element

engaging components to one another, and a second side of the nut which is opposed to the first side thereof. The body portion, at least partially, covers the nut for preventing access thereto by an unfastening tool and extends from the nut to a position alongside the bolt within the gap. Locking means are movable relative to the body portion between a first position, in which the apparatus is removable from the construction fitting, and a second position in which the apparatus is prevented from being removed the fitting. The locking means extends, in its second position, from the body portion in a direction toward the bolt with the gap; the second side of the nut is received in the body portion with the locking means being located beyond the first side of the nut for rendering the nut inaccessible, thereby preventing removal of, or tampering with, the construction fitting when the locking means is locked relative to the construction fitting.

More particularly, the locking means of the presently claimed invention prevents the apparatus from being “pulled off” the nut, thereby preventing tampering of the nut-and-bolt connection. This is achieved by having locking means, that in a first position, in which the apparatus can be fitted and removed, allows the apparatus to pass over the nut, and in a second position, is located closer to the shank of the bolt so that, if an attempt is made to remove the anti-tampering apparatus, the locking means will prevent passage of the apparatus over the nut. The locking means, in its second position, is positioned so that it will strike against the first side of the nut and prevent removal of the anti-tampering apparatus. The locking means is located beyond the first side of the nut along the direction of the shank of the bolt for rendering the nut inaccessible to an unfastening tool.

As will be explained in greater detail hereinafter, nowhere in the prior art is such a novel and effective apparatus for preventing removal of, or tampering with, a construction fitting, which includes locking means located beyond a side of a nut for rendering the nut inaccessible to an unfastening tool when the apparatus is locked, either disclosed or suggested.

By the present amendments, Applicant has amended independent Claim 11 for now reciting that the first side of the nut included in the invention faces away from the body portion of the apparatus when the claimed apparatus is fitted on a construction fitting, and that a second side of the nut, which opposite the first side of the nut, is received in the body portion of the apparatus with the locking means being located beyond the first side of the nut for rendering the nut inaccessible to tampering with an unfastening tool for removing from a construction fitting.

Independent Claim 11 has further been amended to delete the “positive” recitation of “two construction element engaging components,” inasmuch as the claimed apparatus does not include such components as elements of the invention. The construction element engaging components are now inferentially recited in Claim 11 to signify that they may be used with – but do not form a part of – the claimed invention.

Independent Claim 11 has been amended in a manner that is generally consistent with a discussion of the prior art conducted during the telephonic interview between Applicant’s undersigned attorney and the Examiner. The substance of the telephonic interview is summarized in a concurrently-filed document.

Applicant has further amended independent Claim 11 to delete the phrase “in a direction of linear travel of said nut,” which formed a basis for the Examiner’s objection to the *Specification* under 37 C.F.R. §1.75(d)(1) – which objection is now moot – and which the Examiner explained was in the nature of a process limitation and not the optimal manner for claiming apparatus subject matter.

Applicant has also taken this opportunity to add new independent Claim 19 (along with new dependent Claims 20-26), which recites the preferred embodiment of Applicant’s invention, as described in Applicant’s *Specification* (at Page 5) and illustrated in FIG. 3B. This embodiment of the claimed invention was specifically discussed during the telephonic interview with the Examiner on June 2, 2009, and it was tentatively agreed as between Applicant’s attorney and the Examiner that a claim directed to the preferred embodiment of FIG. 3B would be allowable over the prior art.

Finally, Applicant has added new Claims 27-30. New independent Claim 27 is modeled after Claim 1 of Caudell *et al.*, U.K. Patent No. 2,422,412 B, which was first published in the United Kingdom as an application on July 26, 2006. Caudell *et al.* (a copy of which is being filed with this *Amendment*), which discloses and claims a competitor’s product, is not citable as “prior” art and is only being provided for informational purposes, inasmuch as Applicant has drafted new independent Claim 27 on the basis of the subject matter claimed in this U.K. citation. A search conducted by Applicant’s attorney can find no corresponding published U.S. patent application or issued U.S. patent.

Accompanying the present *Amendment in Response to the Final Office Action*, Applicant is filing a *Request for Continued Examination* and remitting the *RCE* filing fee of \$405.00 (small entity) via EFT. Accordingly, the “finality” of the last Office Action should be withdrawn and the foregoing amendments presented herein entered, and considered on their merits, as a matter of right.

Turning now, in detail, to an analysis of the Examiner’s prior art rejection, in the final Office Action the Examiner has again rejected the subject matter of Claims 11-18 as being anticipated, pursuant to 35 U.S.C. §102(b), by Brushaber, U.S. Patent No. 4,645,422, for its contended disclosure of an apparatus for preventing removal of, or tampering with, a construction fitting that includes two element engaging components (27, 28), a fastener (22) for connecting the two engaging components, and which further includes a bolt (22) and a nut (32) for tightening the bolt, thereby rigidly connecting the two construction element engaging components with a gap therebetween. According to the Examiner, Brushaber further discloses a body portion (50) for covering at least a portion of the nut for preventing access thereto and locking means (66) movable relative to the body portion between a first position and a second position, as recited in Applicant’s independent Claim 11, thereby anticipating the claim.

As part of the Examiner’s anticipation rejection and rebuttal to Applicant’s prior arguments, the Examiner pointed out that the phrase “facing in a direction of linear travel of said nut when said nut is tightened onto said bolt” is deemed to be in the nature of a process limitation that, in effect, is not properly accorded patentable weight in an appa-

tus claim. As explained above, the phrase “facing in a direction of linear travel” has now been deleted from Applicant’s claims.

In reply to the Examiner’s anticipation rejection applying Brushaber, the applied citation discloses an anti-theft device for marine propellers, which would appear to take the form of a nut (32) having a transverse, threaded bore (38) and a spinner (50), which fits over the nut. The spinner is retained in place on the nut by a lateral lock pin (66), or grub screw, which engages the transverse bore.

In sharp contrast to that taught and suggested by Brushaber, the present invention, as now most broadly recited in amended independent Claim 11, provides that the locking means is located beyond the first side of the nut, along the direction of the shank of the bolt, thereby rendering the nut inaccessible to tampering by an unfastening tool, rather than engaging the nut, *per se*, as is taught by Brushaber. The locking means of the present invention, in a first position, can be fitted and removed, which allows the anti-tamper apparatus to pass over the nut and, in a second position, is located closer to the shank of the bolt, so that, if an attempt is made to remove the claimed apparatus, the locking means prevents passage of the apparatus over the nut. This is achieved by the locking means, in its second position, as being positioned such that the locking means will strike against the first side of the nut and prevent removal of the anti-tamper apparatus – features that are neither taught nor suggested by the prior art.

In light of the foregoing, and in view of Applicant’s deletion of functional method language and the inclusion of additional structural claim language, it is respectfully

contended that the Examiner's 35 U.S.C. §102(b) anticipation rejection of Claim 11-18 the final Office Action, which applies Brushaber, has now been overcome and it is respectfully requested that the issued anticipation rejection be withdrawn.

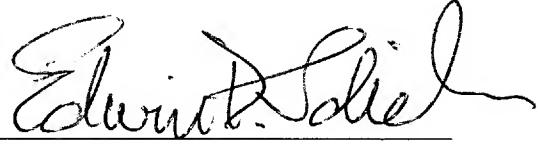
It is Applicant's contention that the structural limitation of independent Claim 11, which distinguishes this claim over Brushaber, is also recited in new independent Claims 19 and 27, thereby rendering new Claims 19-30 patentably distinguishable over the prior art.

In view of the foregoing, it is respectfully contended that all claims now pending in the above-identified patent application (*i.e.*, Claims 11-30) recite a novel and effective apparatus for preventing removal of, or tampering with, a construction fitting, which includes locking means located beyond a side of a nut, which renders the nut inaccessible to an unfastening tool when the locking means is locked, which is patentably distinguish-

able over the prior art. Accordingly, withdrawal of the outstanding rejection and the allowance of all claims now pending are respectfully requested and earnestly solicited.

Respectfully submitted,

MICHAEL KEITH CHING

By 
Edwin D. Schindler
Attorney for Applicant
Reg. No. 31,459

PTO Customer No. 60333

Five Hirsch Avenue
P. O. Box 966
Coram, New York 11727-0966

(631)474-5373

July 9, 2009

Enc.: 1. *Request for Continued Examination*, pursuant to 37 C.F.R. §1.114;
2. EFT for \$405.00 (*Request for Continued Examination*);
3. *Applicant's Summary of Telephonic Interview with the Examiner*; and,
4. Caudell *et al.*, U.K. Patent No. 2,422,412 B, issued August 27, 2008.

The Commissioner for Patents is hereby authorized to charge the Deposit Account of Applicant's Attorney (*Account No. 19-0450*) for any fees or costs pertaining to the prosecution of the above-identified patent application, but which have not otherwise been provided for.